MOHAMED HANIFA MOHAMED YUSOOF

v.

SIKANDAR BATCHA ABDUL MAJEED

HIGH COURT MALAYA, KUALA LUMPUR
ABDUL AZIZ MOHAMAD J
[ORIGINATING SUMMONS NO: R1-24-79-2000]
12 JUNE 2002

BANKRUPTCY: *Adjudication order - Annulment - Effect of annulment - Whether annulment of bankruptcy has retrospective effect - Bankruptcy Act 1967, s. 105(1), (2)*

The defendant, an undischarged bankrupt, was ordered to relinquish to the plaintiff the records and documents of the Pertubuhan Kongres Indian Muslim Malaysia ('KIMMA') and to refrain from holding himself out as the President of KIMMA for the session of 2000-2002 because under s. 9A(1)(d) of the Societies Act 1966 and art. 17(6) of KIMMA's constitution, an undischarged bankrupt cannot be an office bearer. The defendant produced evidence that the adjudication and receiving orders made against him had been annulled as his debts had been paid in full, and applied for a stay of the above-mentioned orders pending his appeal to the Court of Appeal.

Held:

[1] The effect of an annulment of an adjudication of bankruptcy is, as Stirling LJ said *In Re Keet*, to "wipe out the bankruptcy altogether, and put the bankrupt in the same position as if there had been no adjudication". Therefore, an annulment of adjudication of bankruptcy under s. 105(1) of the Bankruptcy Act 1967 has retrospective effect, but subject of course to s. 105(2) of the same Act. (pp 79 g & 80 e)

[Application for stay granted.]

Case(s) referred to:
Chin Kon Nam v. Chai Yun Phin Development Sdn Bhd [1996] 4 MLJ 271 ***(refd)***
Dato' Hj Mohd Muslim Othman v. Shuaib Lazim & Anor [1993] 2 CLJ 177 ***(refd)***
In Re Keet [1905] 2 KB 666 ***(foll)***
Kwong Yik Bank Bhd v. Hah Chiew Yin [1985] 2 MLJ 452 ***(foll)***

Legislation referred to:
Bankruptcy Act 1967, s. 105(1), (2)
Societies Act 1966, s. 9A(1)(d)

Bankruptcy Act 1883 [UK], s. 35

For the plaintiff - Ganesan Karuppannan; M/s Ganesan K & Assocs
For the defendant - Anandan P Thatchanamoorthy; M/s Nazrin Nasir T Anand & Co

Reported by Suresh Nathan

JUDGMENT

Abdul Aziz Mohamad J:
On 31 July 2001, on the plaintiff's application by the originating summons in this case, I ordered the defendant to hand over to the plaintiff the records and documents of the Pertubuhan Kongres Indian Muslim Malaysia ("KIMMA") and to refrain from holding himself out as the president of KIMMA for the session of 2000-2002. The defendant had not responded to the originating summons and was absent when it was heard although there was evidence that he had been served. It appeared to me from the plaintiff's affidavit that the defendant was not the lawful president of KIMMA because he was an undischarged bankrupt, having been adjudged a bankrupt on 6 November 1997, and according to s. 9A(1)(d) of the Societies Act 1966 and art. 17(6) of KIMMA's Constitution, an undischarged bankrupt cannot be an office-bearer. It appeared from the plaintiff's affidavit that the defendant currently claimed himself to be the president of KIMMA by virtue of an election on 11 August 2000.

This is an application by the defendant for a stay of the orders of 31 July 2001 pending his appeal to the Court of Appeal. For this application, the defendant has produced evidence that on 24 November 2000, before the plaintiff filed his originating summons, the adjudication and receiving orders made against him on 6 November 1997 had been annulled. The defendant had sought annulment on the grounds that his debts were paid in full, and I take it that the annulment was on those grounds.

At the commencement of submission on this application, learned counsel for the plaintiff conceded that if the annulment of bankruptcy had retrospective effect, stay should be granted, and he asked that that question of law be addressed first. If an annulment of bankruptcy has retrospective effect, the defendant has to be treated as not being disqualified under s. 9A(1)(d) of the Societies Act 1966 and art. 17(6) of KIMMA's constitution from being an office-bearer when he was elected president on 11 August 2000.

In *Dato' Hj Mohd Muslim bin Othman v. Shuaib Lazim & Anor* [1993] 2 CLJ 177, Malek Ahmad J (now FCJ) held in effect that the annulment of the adjudication order in that case had retrospective effect. On the other hand, Abdul Kadir Sulaiman J (now JCA), in *Chin Kon Nam v. Chai Yun Phin*

Development Sdn Bhd [1996] 4 MLJ 271, ruled, at p. 278 D-E, that the annulment of adjudication of the first plaintiff in that case would not render competent the action that he brought during the period of his incapacity.

Annulment of adjudication is dealt with in s. 105 of the Bankruptcy Act 1967. Subsections (1) and (2) provide as follows:

> (1) Where in the opinion of the court a debtor ought not to have been adjudged bankrupt, or where it is proved to the satisfaction of the court that the debts of the bankrupt are paid in full, or where it appears to the court that proceedings are pending in the Republic of Singapore for the distribution of the bankrupt's estate and effects among his creditors under the bankruptcy or insolvency laws of the Republic of Singapore and that the distribution ought to take place in that country, the court may annul the adjudication.
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> (2) Where an adjudication is annulled under this section, all sales and dispositions of property, and payments duly made, and all acts theretofor done by the Official Assignee, or other person acting under his authority, or by the court, shall be valid, but the property of the debtor who was adjudged bankrupt shall vest in such person as the court appoints, or in default of any such appointment revert to the debtor for all his estate or interest therein on such terms and subject to such conditions, if any, as the court declares by order.

According to sub-s. (1), there are three grounds upon which adjudication may be annulled: (a) the debtor ought not to have been adjudged bankrupt; (b) the debts of the bankrupt are paid in full; and (c) the distribution of the bankrupt's estate and effects ought to take place in Singapore. If any of the grounds is shown, the court may exercise its discretion to annul the adjudication, and where adjudication is annulled on any of those grounds, the effect of the annulment must be the same as that of annulment on any of the other grounds.

As the word "annul" itself signifies, the effect of an annulment of an adjudication of bankruptcy is, as Stirling LJ said in *In Re Keet* [1905] 2 KB 666, at p. 676, to "wipe out the bankruptcy altogether, and put the bankrupt in the same position as if there had been no adjudication".

In Re Keet was not concerned with the question whether annulment of bankruptcy has retrospective effect. It was concerned with the question whether "the debts of the bankrupt are paid in full" for the purposes of s. 35 of the Bankruptcy Act 1883, which provided that "where it is proved to the satisfaction of the court that the debts of the bankrupt are paid in full, the court may, on the application of any person interested, by order, annul the adjudication". But Sterling LJ said those words to distinguish annulment from an order of discharge and to emphasise that, such being the

effect of an annulment, where a bankrupt applies for annulment on the grounds of having paid his debts in full, the court must be satisfied that he has paid his debts in full as intended by the section and that the court ought, in the circumstances, to exercise its discretion to annul the adjudication.

I have no doubt that Sterling LJ's words correctly express the effect of annulment. The Federal Court adopted those words in *Kwong Yik Bank Bhd v. Hah Chiew Yin* [1985] 2 MLJ 452. See p. 452 bottom right and p. 453 top left. The words could only mean that the effect of annulment is retrospective. To say of the defendant that notwithstanding the annulment he must nonetheless be treated as disqualified by bankruptcy on 11 August 2000 from being elected president of KIMMA would be not to "wipe out the bankruptcy altogether" and not to put him "in the same position as if there had been no adjudication".

Furthermore, 1 have no doubt – as learned counsel for the plaintiff himself conceded – that if an annulment is on the first of the three grounds in sub-s. (1) of s. 105, that is, that the debtor "ought not to have been adjudged bankrupt", the annulment would have retrospective effect. As I said, the effect has to be the same if an annulment, as in this case, is on the second ground of full payment of debts. If the effect is to be different, full payment of debts would not have been made an equally good ground for annulment as the first ground.

I hold, therefore, that an annulment of adjudication of bankruptcy has retrospective effect, but subject of course to sub-s. (2) of s. 105.

I allow a stay.